
IMPARTIAL SPECTATOR IN THE MARKETPLACE OF IDEAS: THE PRINCIPLES OF ADAM SMITH AS AN ETHICAL BASIS FOR REGULATION OF CORPORATE SPEECH

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The corporate voice is arguably the loudest in mass communication today and has been the subject of a series of landmark Supreme Court decisions since 1978. This integrative essay offers an ethical basis for justifying regulation of corporate speech, based on the neglected moral and political theories of Adam Smith. His essential tenets on free markets are applied to the First Amendment marketplace of ideas concept that has been prominent in developing corporate free-speech rights. This essay argues that regulation of corporate speech on this basis can actually enable more ideas to flourish in the political marketplace—advancing utilitarian ideals of the common good.

Introduction

During the past century and a half, the business corporation has evolved into such a dominant force that it has been described as “the most central institution in modern society.”¹ By the late nineteenth century, many Americans already had begun to feel that they were “governed more by corporations than by the state.”² With such lucrative, state-endowed advantages as limited liability and perpetual life, the organizational structure known in law as the corporate form has proven since then to be an unprecedented generator of wealth and influence, characterized as “mankind’s sole remaining endeavor.”³ As a manifestation of that virtually unmatched power, the corporate voice is arguably the loudest in mass communication today.⁴

In a capitalist, democratic republic, can that voice be moderated by other interests in society? Can competing values be institutionalized in order to further such interests? And if so, is there an ethical basis for justifying such measures? Commentators have disagreed sharply on those essential questions, particularly during the past quarter-century as the U.S. Supreme Court handed down a series of landmark decisions on corporate speech.⁵ In 1978’s *First National Bank of Boston v. Bellotti*, the Court established First Amendment protection for corporate speech—media messages by corporations that are designed to affect social climate

or political outcomes.⁶ Since *Bellotti*, federal and state governments have sought to regulate corporate speech without infringing the free-speech protection constitutionalized in that decision, in order to address the potentially damaging effects of corporate speech on democratic processes. However, the debate over whether justification exists for such regulation has continued.

That debate centers on the question of whether regulation of corporate speech advances or diminishes free speech in a democratic society. The purpose of this integrative essay is to offer an ethical basis for justifying regulation of corporate speech, a basis derived from the theories of Adam Smith. Though he is more widely known for his economic principles, Smith was “a moral philosopher by profession, and his writings deal with ethics as much as economics.”⁷ Popular modern images of the eighteenth-century Scottish philosopher as simply a conservative economist and free-trade theorist neglect the larger thrust of his thinking.

Criticism of corporate-speech regulation contends that such regulation is not justified and is not in the best interests of society. However, this study draws on Smith’s concepts to argue the opposite. Essentially, Smith called for limiting government in order to allow the motivation of self-interest to flourish and generate material benefits for society—because that advanced the utilitarian value of the common good, Smith’s ultimate concern. However, he also emphasized that a system of justice was essential to protect all members of society as well as possible—including protecting free markets from domination by the most powerful business interests.

The approach used in this study conceptualizes ethics as a rational process, which is based upon underlying principles, for addressing values in conflict. Smith’s principles are argued here as an ethical basis for considering the conflicting values reflected in the debate over regulation of corporate speech. This approach draws upon utilitarianism, a school of thought from the teleological branch of ethics, which begins with the premise that consequences are important in deciding whether an act or a rule is ethical. Originally articulated by Jeremy Bentham and John Stuart Mill in the nineteenth century, utilitarianism proposes that justice can be determined through a process of ethical reasoning that considers the degree to which an action contributes to the greater societal good. “Act utilitarianism” is concerned with the ethics of specific decisions, while “rule utilitarianism” deals more broadly with the ethical justification for societal practices or institutions. The latter concept is employed in this study.⁸

While ethics and law are separate concerns in one sense—law being concerned more with *what is*, and ethics more with *what ought to be*—they are hardly unrelated. Ethical considerations must underlie the development and interpretation of law in order for justice to be served, particularly when competing values are at stake in such ways that the letter of the law does not offer clear resolution. This study’s application of ethical principles as justification for legal doctrine broadly reflects the

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Smithian concept of such a relationship between ethics and law. Behrman, for example, analyzes Smith's work in terms of key institutions based upon societal values and expressed ethics—or values in action—designed to balance and maximize individual freedom and social good.⁹ Niebuhr characterized law as “a compromise between moral ideas and practical possibilities.”¹⁰

Broad philosophical concepts underlie or support many fundamentals of the law. American constitutional law, for example, begins with a priority on promoting the common welfare. First Amendment law reflects a philosophical interest in advancing such values as democratic governance, the search for truth, and individual fulfillment through freedom of expression.¹¹ First Amendment issues frequently involve complicated questions of competing values, and this is very much the case in the debate over regulation of corporate speech. Therefore, this study seeks to advance the debate through an analysis of Smithian theory. That analysis supports a rule-utilitarianism argument that regulation of corporate speech is ethically sound in terms of the degree to which it contributes to the greater societal good.

In particular, this discussion will argue that Smith's essential tenets on free markets can be applied to the First Amendment marketplace-of-ideas concept¹² that has been prominent in shaping free speech rights for corporations. That is, Smith's concept of *individuals* competing equally in a free market toward the greatest good for society can be applied to the concept of *ideas* competing in a free market. His principles consistently provide support for this study's assertion that regulation efforts related to corporate speech do not reduce ideas in the political marketplace but enable more ideas to flourish—advancing utilitarian ideals of the common good.

Adam Smith

As a professor of moral philosophy at Glasgow University in the second half of the eighteenth century, Adam Smith lectured in theology, ethics, and jurisprudence. He became part of a circle of scholars at the Scottish universities at Glasgow and Edinburgh whose work is often referred to today as “the Scottish Historical School” or “the Scottish School.”¹³ Broadly, their work analyzed historical changes in concepts of property and the effects of such changes on society. Smith became famous with the 1759 publication of *The Theory of Moral Sentiments*, in which he focused on ethical theory. In *An Inquiry Into the Nature and Causes of the Wealth of Nations*, published in 1776, Smith advanced his economic theories. After his death in 1790, students' notes from his lectures at Glasgow were published as *Lectures on Jurisprudence*, which focused on his theories of justice. Smith's main interest was in investigating “whether the effects of market commercial society were good or bad for individuals and government,” and his “ultimate normative goal [was] the improvement of men and government.”¹⁴ Thus, “[t]he political significance of Smith's writings derives from his concern not only for the economic wealth of the nation, but also for the well-being of society as a whole and for the freedom of the individual within that society.”¹⁵

Yet the popular image of Smith remains that of an economist who advocated the pursuit of profits governed by nothing but the “invisible hand.”¹⁶ Although Smith actually based his economic theories upon his theories of jurisprudence, and those in turn were based upon his moral theories, “Smith’s modern followers tend to be economists without a strong sense of civic life, and so that is how his admirers and detractors see Smith himself.”¹⁷ As a result, “[e]ven in its traditional, run-of-the-classroom versions, the prevailing view of Adam Smith’s philosophy renders him far more like Boesky and Gekko than even the most rabid reading allows.”¹⁸

After Smith’s death, the interpretation of his ideas was taken up by many who were interested only in his work on political economy.¹⁹ *Wealth of Nations* was published the same year that American revolutionaries declared independence, and the book was influential in the new nation. However, too many Americans learned economics from texts that tended to “distort both Smith’s moral theory and his economics. These texts emphasized laissez-faire, a word Smith did not use, and competitive individualism, at the cost of the benevolence and justice which Smith emphasized.”²⁰ Because of these factors, “[t]he main impact of *Wealth of Nations* was to establish a powerful economic justification for the untrammelled pursuit of individual self-interest.”²¹

This essay argues that Smith’s work in fact justifies the regulation of self-interest—but only to the extent that such pursuit endangers the common good. The next section briefly summarizes the corporate-speech case law as established by *Bellotti* and related decisions. That is followed by a discussion of issues under debate concerning regulation of corporate speech. Then Smith’s work is analyzed in terms of the ethical arguments it supports concerning regulation of corporate speech.

One of the major arguments asserted by the government in *Bellotti* as justification for regulation of corporate speech in referenda campaigns in Massachusetts was an interest in sustaining the active role of individual citizens in the electoral process and maintaining citizens’ confidence in government. The government contended that the wealth and power of corporations could drown out other points of view and undermine democratic processes. The majority and minority on the Court split sharply over that issue in the 5-4 decision, with the majority emphasizing the listener’s First Amendment right to receive information on the theory that it contributes to democratic decision making. Thus, the Court restricted government from limiting the marketplace’s range of information and ideas—including corporate speech—to which the public is exposed.²²

The Court has maintained this restriction on government in most areas of corporate speech. In *Central Hudson Gas & Electric Corp. v. Public Service Commission*²³ in 1980, the question involved the right of government to regulate corporate speech relating to the 1970s energy crisis.²⁴ Although the case is more often discussed today in terms of the balancing test it established for the protection of commercial speech,²⁵ Justice John Paul Stevens argued in his concurring opinion that the regulation in

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question suppressed corporate political speech beyond commercial speech because the banned speech could address questions under debate by political leaders.²⁶ The Supreme Court ruled 8-1 that the regulation was not justified—even though it advanced the government's substantial interest in conserving energy—because it was more extensive than necessary to further that interest.²⁷ Another New York utility corporation successfully asserted First Amendment interests in *Consolidated Edison Co. of New York v. Public Service Commission of New York*.²⁸ The Court based its decision in part on the *Bellotti* holding that “the inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual.”²⁹

A corporate newsletter published by Pacific Gas and Electric Company was the focal point of the controversy that produced *Pacific Gas & Electric Co. v. Public Utilities Commission*.³⁰ When a consumer group complained to the Public Utilities Commission of California that the newsletter sometimes included items that could be considered political comment, the commission ruled that such groups could have access to “extra space” in the billing envelope.³¹ PG&E contended the order violated its First Amendment rights, and the Supreme Court agreed, unanimously finding in 1986 that the regulation impermissibly burdened the utility's free-speech rights by requiring it to associate with speech with which it might not agree.³²

However, the Supreme Court has allowed government regulation that targets corporate speech in order to address corruption or the appearance of corruption. In *Federal Election Commission v. National Right to Work Committee*, decided in 1982,³³ a challenge was brought against a federal campaign regulation that was designed to ensure that money used by corporations in political activity represented the speech interests of those whose money was involved.³⁴ The Supreme Court upheld the regulation, unanimously ruling that the interests the government sought to protect were compelling enough to outweigh corporate First Amendment rights of association asserted by NRWC. The decision described the regulation as the culmination of a “careful legislative adjustment of the federal electoral laws . . . to prevent both actual and apparent corruption . . . [reflecting] a legislative judgment that the special characteristics of the corporate structure require particularly careful regulation.”³⁵ In *Federal Election Commission v. Massachusetts Citizens for Life*³⁶ in 1986, the Court upheld the principle underlying the same regulation at issue in *NRWC*—that corporations amassing great wealth in the economic marketplace should not gain unfair advantage in the political marketplace. (However, the Court ruled that the regulation did not apply to *Massachusetts Citizens for Life*, a nonprofit corporation devoted to ending abortion, because it was formed to disseminate political ideas rather than to amass capital.)³⁷

In 1990's *Austin v. Michigan State Chamber of Commerce*, the most recent corporate-speech case, the Court upheld a Michigan regulation addressing, in the words of the Court, “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the

public's support for the corporation's political ideas. . . . It ensures that expenditures reflect actual public support for the political ideas espoused by corporations." Reasoning that "corporate wealth can unfairly influence elections when it is deployed in the form of independent expenditures, just as it can when it assumes the guise of political contributions," the Court held that state governments may regulate independent expenditures by corporations.³⁸

In summary, the constitutional right for corporate speech established in *Bellotti* was reinforced in *Central Hudson*, *Consolidated Edison*, and *Pacific Gas & Electric*. It was tightened or focused in *NRWC*, *MCFL*, and *Austin*, clarifying the degree to which corporate First Amendment rights are less than those of individuals. The case law emphasizes that regulation of corporate speech should target prevention of corruption or the appearance of corruption, and that political speech by corporations should reflect public support, not just the economic power of the corporation. However, the Court has maintained a strong aversion to any content regulation of corporate speech. The government is required to establish compelling justification that a regulation of corporate speech addresses some form of real or apparent corruption in order to establish constitutionality. Parallels between Smithian theory and the Court's holdings and language in corporate-speech decisions will be detailed below, after discussions of the scholarly debate over corporate speech and of Smithian ethics in more depth.

Critical themes that run through the literature on corporate speech highlight the debate over whether such speech undermines or advances democratic processes. The broad issues under contention have been characterized as an attempt to resolve a core philosophical conflict between liberal democratic ideology and organizational values,³⁹ or between individual freedom of expression and social utility.⁴⁰ Rome and Roberts characterized the conflict as one between (1) the belief that corporate expression differs from individual expression to such an extent that it should receive lesser or no First Amendment protection, and (2) the belief that "protection of every species of expression . . . not only is protection of the right of the speaker but . . . is at least in part, for the benefit of listeners or recipients."⁴¹

Both camps are well represented in the literature. Greenwood dismissed corporate speech as antithetical to the basic principles of democracy and deserving of no constitutional protection.⁴² Deetz asserted that in *Bellotti*, "the corporation is given rights like those of an individual, [but] the individual is not given the expression power of the corporation," and argued corporate influence is maintained through "a colonization of public decision making."⁴³ Kuhn and Berg argued that "complex, little understood social system[s] . . . [corporations] alter the structure of society . . . [through] the governmental role they have assumed."⁴⁴ Weissman asserted recently that it is now the norm for corporations to engage in massive campaign spending on all initiatives and referenda that may affect corporate interests.⁴⁵ Research has shown correlations suggesting that corporate spending influences

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the outcomes of elections, although the outcomes may be affected by other variables.⁴⁶

Many scholars writing in response to the *Bellotti* decision predicted correctly that it would greatly restrict state regulation of corporate spending to influence referenda voting. "It will be difficult to draft a state statute whose burden would be held a reasonable one," Fox forecast.⁴⁷ Hart and Shore foresaw corporations of all sorts becoming "even more involved in electoral politics."⁴⁸ Baker predicted that *Bellotti* would seriously undermine citizens' influence on democracy because corporate speech is dictated by profit-maximizing mandates of the market, not the human values of individuals.⁴⁹ Prentice anticipated, accurately, it has turned out, that *Bellotti* would allow government regulation of corporate electoral activity "when that activity is based upon solid evidence that the target activity would lead to corruption or the appearance of it."⁵⁰

Friedman and May strongly advocated such regulatory efforts: "If it weren't for our ultimate political sovereignty [as individuals], then our political speech would not have the constitutional importance which it now has. . . . Corporations are not, as such, sovereign members of our civil society. They exist at the sufferance of law and judicial ruling."⁵¹ Gowri also argued against unregulated corporate speech, proposing a system whereby corporations would disclose all political spending and offer rebates to shareholders who did not approve of the causes supported: "If corporate speech could be brought into closer alignment with shareholder views, then the voice speaking to hearers in the marketplace would be closer to a human voice; and the loud competing views confronting other speakers would be closer to human views."⁵²

On the other side of the debate, proponents have maintained it is healthier to free the corporate voice than to stifle it. Foreshadowing *Bellotti* a decade before the Supreme Court decision, Epstein wrote that "the expanding importance of governmental involvement in the operations of the economy . . . has resulted in the necessity of increased corporate political involvement." He argued that corporations "should be placed on a legal parity with other social interests" because the corporation "contributes to the maintenance of pluralistic democracy in America rather than endangers it."⁵³ Barry contended that corporations serve a vital political function in a democratic society, that of upholding the property and contractual rights of their stockholders through lawful expansion of profits.⁵⁴ Redish and Wasserman asserted that constitutional protection for corporate political speech fulfills First Amendment values because "the corporate form performs an important democratic function in facilitating the personal self-realization of the individuals who have made the voluntary choice to make use of it," and because "corporate speech may serve a vital role in checking potential government excesses."⁵⁵

Some scholars have asserted that other forces are more effective than government at promoting responsible corporate speech. There is "a large social interest in hearing what corporations have to say about public issues," Sunstein argued, emphasizing that "no one is forced to believe what the corporations claim."⁵⁶ To that end, individuals will be made aware by alternate sources if a corporation's actions are incongru-

ent with its messages, Sethi contended.⁵⁷ Butler and Ribstein made the case that "Corporate power may, in fact, better represent voter support than the groups that would gain from a reallocation of power," because "corporate speech must conform at least generally with the views of a cross-section of the community" or risk alienating shareholders, consumers, employees, and other publics critical to the success of the organization.⁵⁸

Ramler condemned the *Austin* decision, reasoning that restricting corporate freedom of speech would decrease "the amount of information upon which voters may rely to make intelligent decisions about the officials who will represent them in government."⁵⁹ Schofield predicted that *Austin* would make the First Amendment protection granted to corporate political speech by *Bellotti* "very easy to circumvent for a state that wishes to regulate 'free' political speech," contending that *Austin* "may have weakened other fundamental rights that are currently protected by the 'compelling state interest' requirement."⁶⁰ Geary criticized *Austin's* definition of corruption as too broad.⁶¹

In summary, the ideological debate regarding First Amendment protection for corporate speech is highlighted by sharp disagreement as to whether regulation of such speech enhances or diminishes the greater interests of a democratic society. This study advances the discussion by asserting justification for regulation of corporate speech based on ethical principles. Adam Smith's principles provide ethical direction by employing free-market theory to promote utilitarian ideals of the greater common good. In the next section, Smith's essential tenets on free markets are applied to the concept of the First Amendment marketplace of ideas. The argument is made that regulation efforts related to corporate speech can work to expand the marketplace of ideas and enable more ideas to flourish, thus enhancing democratic processes and the common good.

Given that Smith developed his ideas in a pre-capitalist, pre-democratic world, his comprehensive eighteenth-century prescriptives cannot simply be transposed whole upon twenty-first-century corporate behavior. However, Smith's enduring principles remain useful in considering ethical issues today, particularly the corporate-speech issues addressed in this study.

In fact, the frequent distortion of Smith's ideas reflects a failure to place them in their proper historical context and thus a crucial lack of awareness of the dominant economic realities under which he wrote. Smith's economic theories emphasized market forces and consumer autonomy as an alternative to the political economy of mercantilism. His system, which later would be referred to as capitalism, was "as revolutionary a concept with respect to the dominant mercantilism of its day as Marx's communism was to the capitalism of the mid-nineteenth century."⁶² The greatest priority of the economic system of mercantilism was enriching the nation-state, basically by maximizing exports and minimizing imports. Thus, "[m]ercantilism benefited producers and entrenched interests at the expense of consumers and the growing

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middle classes, who were forced to pay inflated prices for domestically produced goods which were shielded from foreign competition by various protectionist mechanisms."⁶³ As Smith wrote: "It cannot be very difficult to determine who have been the contrivers of this whole mercantile system; not the customers, we may believe, whose interest has been entirely neglected; but the producers whose interest has been so carefully attended to."⁶⁴

So Smith was reacting against mercantilism, not defending the modern-day, private-enterprise system.⁶⁵ The driving force behind Smith's vigorous critique of the status quo was his desire to improve the harsh living conditions he saw in Scotland and England."⁶⁶ Rather than blaming the poor for their misfortunes, as mercantilist theory did, Smith blamed the economic system. To that end he called for abandoning mercantilist policies of sanctioning monopolies, putting quotas on imports, regulating tradesmen, and restricting other aspects of economic behavior. Smith opposed that sort of government regulation because it privileged the few at the expense of the many and prevented most from competing fairly in a free market. Thus we find "the thread that runs through all his works" is "how the market can be structured to make the pursuit of self-interest benefit consumers."⁶⁷

When we consider the marketplace of ideas in terms of Smith's free market, it is clear that openness for all competitors and consumers is the priority. However, the interests of the most powerful competitors may work against openness. As Smith observed, "The interest of the dealers . . . in any particular branch of trade or manufactures, is always in some respects different from, and even opposite to, that of the publick. To widen the market and to narrow the competition, is always the interest of the dealers. To widen the market may frequently be agreeable enough to the interest of the publick; but to narrow the competition must always be against it."⁶⁸

Smith's use of the term "invisible hand" in *Wealth of Nations* does not represent a blanket defense of untrammelled self-interest, as it is often characterized in arguments against the regulation of business. Smith's "invisible hand" represents instead a metaphor for the socially positive but unintended consequences that, as he theorized it, paradoxically can result from the pursuit of self-interest in market activity. Bishop explained that Smith found it desirable to allow individuals to base their economic choices on self-interest because the "constant drive of most people to improve their economic and social condition provided the incentive for individuals to direct their economic activities towards wealth production, and this ultimately would increase the overall wealth of society."⁶⁹

Thus Smith was a champion of individualism, but not to the extent that its excesses destroyed community. He did not, after all, title his most famous work *The Wealth of Individuals*. Smith's concept of limited government encouraging individual self-interest to flourish was based on what he saw as the relentless passion of humans for "bettering our condition, a desire which, though generally calm and dispassionate, comes with us from the womb, and never leaves us till we go in the grave. . . . In the whole interval which separates those two moments, there is scarce

perhaps a single instant in which any man is so perfectly and completely satisfied with his situation, as to be without any wish of alteration or improvement of any kind.”⁷⁰ Thomas Jefferson regarded *The Wealth of Nations* as the best book available on political economy,⁷¹ and he and others envisioned Smith’s concept of self-interest being developed in terms of both economic and political involvement for all:

Self-interest could only be accounted socially benign if it could be demonstrated that all this incessant striving after private ends did not lead to chaos. . . . [Smith theorized that] the urge to improve oneself through profitable exchanges prompted each to commit her and his resources most advantageously, and when disciplined by competition, led inexorably to the greatest good for society. . . . Where [Jeffersonian] Republicans differed from Federalists was in the moral character they gave to economic development. . . . [T]he more equal [than in England] social conditions that prevailed in America made it possible to think of the economists’ description of the market as a template for . . . a society of economically progressive, socially equal, and politically competent citizens.⁷²

Smith’s emphasis on equality of economic and political opportunity does not “imply that Smith favored equality of outcomes. Clearly he did not, nor did he think that such equality would be a result of a free-market economy. But the market is most efficient and most fair when there is competition among similarly matched parties.”⁷³ In that vein, this study asserts that the marketplace of ideas will operate more efficiently and fairly when competing parties have similar opportunities to communicate ideas, and that a free marketplace of ideas contributes to utilitarian ideals of the greater common good.

This essay does not suggest that any Supreme Court holdings in corporate-speech cases have been based expressly upon Smithian principles. In his dissenting opinion in the *Central Hudson* case, Justice William Rehnquist did make a brief reference to the concept of the marketplace of ideas being analogous to Smith’s concept of a free economic market.⁷⁴ However, none of the other justices has cited Smith or specifically articulated any of Smith’s concepts in a corporate-speech decision. That said, this study maintains that when we apply Smithian principles to corporate speech in the manner articulated in this essay, we find that such application is consistent with the holdings and language of the Supreme Court’s corporate-speech decisions.

When characterized in terms of Smith’s concepts, Supreme Court decisions on corporate speech represent an ongoing process aimed at preventing stronger competitors from diminishing freedom within the marketplace of ideas. In *Bellotti* and related decisions, the Court has maintained a difficult Smithian ethical balance regarding regulation of the corporate voice. The Court’s corporate-speech decisions have em-

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phasized preventing corruption and ensuring that corporate political speech represents public support. At the same time, those decisions stress a limiting of government, which promotes opportunity for the expression of the self-interest reflected in corporate speech. Such a balance advances ethical concerns, in Smithian theory, because it works in the long-term interests of society at large by resisting the narrowing of the marketplace.

Prominent throughout Smith's work is the community-oriented concept of the "impartial spectator," articulated at length in his *Theory of Moral Sentiments*: "It is [the impartial spectator] who, whenever we are about to act so as to affect the happiness of others, calls to us, with a voice capable of astonishing the most presumptuous of our passions, that we are but one of the multitude, in no respect better than any other in it. . . . It is he who shews us the propriety of generosity and the deformity of injustice; the propriety of resigning the greatest interests of our own for the yet greater interests of others."⁷⁵ This concept is crucial to Smith's concept of justice advancing the common good, which is equally central to both *Theory of Moral Sentiments* and *Wealth of Nations*.⁷⁶

In the former, Smith wrote that a competitor "may run as hard as he can, and strain every nerve and every muscle, in order to outstrip all his competitors. But if he should jostle, or throw down any of them, the indulgence of the spectators is entirely at an end. It is a violation of fair play, which they cannot admit of."⁷⁷ And in *Wealth of Nations*, he wrote that government is responsible for "protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it."⁷⁸ Smith asserted the essential duties of government as external defense, justice, and public works.⁷⁹

In this element of Smithian theory, "Laws of justice act as an impartial spectator . . . [safeguarding] both fair play in market exchanges and the public welfare. . . . [The invisible hand] is efficient only to the extent that it exists within the context of perfect liberty, coordination or economic harmony, equally advantageous competition, and fair play. . . . The invisible hand, then, is a dependent, not an independent variable."⁸⁰ Thus it distorts Smith's work to focus only on the self-interest concepts while ignoring the emphasis he placed on their context within a system of social justice. A system of justice, serving the function of the impartial spectator, must maintain a free market that protects "as far as possible, every member of the society from the injustice or oppression of every other member of it,"⁸¹ emphasizing liberty, competition, fair play, and limited government.

The Supreme Court's corporate-speech decisions as a whole have served an "impartial spectator" function, seeking to ensure that some competitors in the marketplace of ideas do not "jostle, or throw down" any of the other competitors — as well as to prevent government from stifling expression of the self-interest reflected in corporate speech. Thus we see that Smith's theory of free markets and its application here to the marketplace of ideas are ethically consistent with justice related to corporate speech.

The language of the Court in its corporate-speech decisions offers parallels between Smith's concept of *individuals* competing equally in a

free market toward the greatest good for society and the concept of *ideas* competing in a free market. In the *Bellotti* decision, the Court made it clear that any regulation of corporate speech could not be based solely on the corporate identity of the speaker, finding “no support in the First or Fourteenth Amendment, or in the decisions of this Court, for the proposition that speech that otherwise would be within the protection of the First Amendment loses that protection simply because its source is a corporation.”⁸² The Court’s decision struck down a Massachusetts statute prohibiting corporations from campaigning to influence the outcome of referenda that did not materially affect their business interests. The majority held that speech concerning the issues in a referendum on a state constitutional amendment is the type of speech indispensable to decision making in a democracy, and that corporate speech does not represent potential for corruption in referendum campaigns that focus on issues rather than individuals, because the former cannot be corrupted by political debt as the latter may.⁸³ Thus, in Smithian terms, the Court began in *Bellotti* to define when the corporate speaker is only running as hard as he can within the bounds of fair play in the marketplace of ideas—and thus is not subject to government interference.

Similarly, the Court held in the *Central Hudson* case that the New York Public Service Commission could not ban promotional advertising by electric-utility corporations in an effort to reduce energy consumption, because the government failed to show that a more limited regulation would not protect its interest in conservation.⁸⁴ In the *Consolidated Edison* case, the Court ruled that the state’s Public Service Commission could not prohibit public utility corporations from discussing controversial issues of public policy in monthly utility-bill inserts. Allowing the government to determine what material was useful to consumers and what was not clearly represented content regulation of political speech, the Court said, a practice unconstitutional even when the source of such speech is a corporation.⁸⁵ In the *Pacific Gas & Electric* decision, the Court held that a corporation could not be forced to associate with speech with which it might not agree by subjecting it to a regulation requiring the corporation to include competing political messages in mailings of a corporate newsletter, “speech that the First Amendment is designed to protect.”⁸⁶

In all those cases, the Court deemed the expressions of corporate speech involved to be—as Smithian theory would characterize it—fair play in the marketplace of ideas. In particular, the cases firmly established First Amendment protection for corporate speech from content regulation by government. As Justice Powell wrote in *Central Hudson*: “If the marketplace of ideas is to remain free and open, governments must not be allowed to choose ‘which issues are worth discussing or debating.’”⁸⁷

However, consistent with Smithian theory that the indulgence of the spectators may end if a violation of fair play should occur, the Court has delineated ways in which corporate speech may corrupt the marketplace of ideas. In *Bellotti*, the Court said: “According to [the government], corporations are wealthy and powerful and their views may drown out other points of view. If [these] arguments were supported by record or

legislative findings that corporate advocacy threatened imminently to undermine democratic processes, thereby denigrating rather than serving First Amendment interests, these arguments would merit our consideration." In that decision, the Court held there was no showing of democratic processes being undermined.⁸⁸ However, in later corporate-speech cases, the Court did in fact deem that undermining of democratic processes was addressed by the regulations at issue.

In the *NRWC* decision, for example, the Court noted: "The governmental interest in preventing both actual corruption and the appearance of corruption of elected representatives has long been recognized, and there is no reason why it may not in this case be accomplished by treating unions, corporations and similar organizations differently from individuals."⁸⁹ In *Buckley v. Valeo* in 1976, the Court had defined corruption as "a subversion of the political process" in which "[e]lected officials are influenced to act contrary to their obligations of office."⁹⁰ In *NRWC*, the Court accepted the government's assertion that the regulation of corporate speech under question in the case ensured "that substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization should not be converted into political 'war chests' which could be used to incur political debts from legislators."⁹¹ In Smithian theory, such corruption would work to narrow the political marketplace of ideas because democratic processes would then be influenced more by unfair corporate influence on elected officials than by ideas competing freely.

In language strikingly resonant of the Smithian emphasis on government maintaining fairness in the marketplace of ideas, the Court in the *MCFL* decision declared:

Resources amassed in the economic marketplace may be used to provide an unfair advantage in the political marketplace. Political "free trade" does not necessarily require that all who participate in the political marketplace do so with exactly equal resources. . . . Relative availability of funds is after all a rough barometer of public support. The resources in the treasury of a business corporation, however, are not an indication of popular support for the corporation's political ideas. They reflect instead the economically motivated decisions of investors and customers. . . . [T]hese resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.⁹²

In this assertion, the Court sought to prevent competitors with advantages in the economic marketplace (such as the corporation's limited liability and perpetual life) from utilizing those advantages to unfairly diminish the freedom of the marketplace of ideas. "This concern over the corrosive influence of concentrated corporate wealth reflects the conviction that it is important to protect the integrity of the marketplace of political ideas. . . . By requiring that corporate independent expenditures be financed through a political committee expressly established to

engage in campaign spending, . . . [the regulation in question] seeks to prevent this threat to the political marketplace,” wrote Justice William J. Brennan, Jr.⁹³

In the *Austin* decision, the Court concluded, “Michigan identified as a serious danger the significant possibility that corporate political expenditures will undermine the integrity of the political process, and it has implemented a narrowly tailored solution to that problem.” The Court held that the regulation requiring corporations to make campaign expenditures through separate funds that were solicited expressly for political purposes reduced the threat that “huge corporate treasuries amassed with the aid of favorable state laws will be used to influence unfairly the outcome of elections.”⁹⁴ These assertions are clearly consistent with Smithian theory. Allowing corporate power to undermine the integrity of democratic processes would unfairly distort the political marketplace of ideas and work against utilitarian ideals of the common good that are represented in maintaining the freedom of that marketplace.

That the Supreme Court has found potential in corporate speech for corruption of democratic processes would not surprise Smith. He “expected that concentrated economic resources could be readily translated into political influence, which he considered similar to other commodities for which there was a supply and demand.”⁹⁵ He believed that keeping markets free actually involved making sure powerful business interests did not use their influence to overwhelm the freedom of the market. “Smith thought . . . in particular, if business people pursued their self-interest in the political arena, they would only seek the overthrow of the free market system for their own benefit and everyone else’s loss.”⁹⁶ Smith found merchants and manufacturers “an order of men whose interest is never exactly the same with that of the public.”⁹⁷

The arguments and evidence outlined above establish the usefulness of Smith’s theories in providing an ethical basis justifying regulation of corporate speech—a basis that is consistent with the reasoning in Supreme Court cases upholding such regulation. Smith championed the concept of individuals competing with equal opportunities in a free market as a process that advanced utilitarian ideals of the greater good for society. The principles underlying that concept can be applied to the First Amendment concept of ideas competing in a free market, and doing so provides ethical justification for regulating corporate speech in an effort to protect democratic processes.

In such an application, the justice system is crucial in acting as an “impartial spectator” to ensure that some competitors in the marketplace of ideas do not dominate it and disadvantage other competitors — but also to prevent government from stifling expression of the self-interest reflected in corporate speech. In its corporate-speech decisions, the Supreme Court has particularly emphasized preventing corruption and ensuring that corporate speech represents public support. The holdings and language of the Court in its corporate-speech decisions reflect Smith’s “impartial spectator” function at work in the marketplace of

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ideas, seeking to protect “as far as possible, every member of the society from the injustice or oppression of every other member of it,”⁹⁸ and stressing fair play by competitors in that marketplace.

Assessing regulation of corporate speech within these parameters provides ethical direction on Smith’s terms, employing free-market theory in the manner he actually intended—as a means for advancing utilitarian ideals of the greater common good.

NOTES

1. Stanley A. Deetz, *Democracy in an Age of Corporate Colonization* (Albany, NY: State University of New York Press, 1992), 52, ix.

2. John P. Davis, *Corporations* (1905; reprint, New York: Capricorn Books, 1961), 268.

3. Richard Powers, *Gain* (New York: Picador, 1999), 159.

4. It could be argued that the federal government rivals the corporate voice as the loudest in mass communication today, considering the tremendous means of modern government. However, even that level of power does not equal the resources that corporate interests can bring to bear in mass communication today. Since midway through the twentieth century, corporations have increasingly demonstrated their ability to dominate mass communication both independently and in a unified voice through such organizations as the National Association of Manufacturers, the Chamber of Commerce, and the Business Roundtable. All government spending is subject to ongoing oversight and debate among legislative, executive, and judicial interests, and rarely does the federal government speak with one voice. Further, the federal government does not have the First Amendment protection that corporate speech now enjoys, nor does government own the media organizations that dominate mass communication today—corporations do. Even the level of regulatory power that government once held over many media organizations through the Federal Communications Commission is greatly reduced today.

5. The contemporary case law on First Amendment rights for corporate speech derives for the most part from Supreme Court decisions beginning with *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), and continuing through some half dozen major decisions by the high court to *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652 (1990).

6. Corporate speech is distinguished from commercial speech, in which corporations promote sales of products or services, and which was granted a lesser degree of constitutional protection in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976).

7. John D. Bishop, “Adam Smith’s Invisible Hand Argument,” *Journal of Business Ethics* 14 (March 1995): 165.

8. Philip Patterson and Lee Wilkins, *Media Ethics: Issues and Cases*, 2d ed. (Madison, WI: Brown and Benchmark, 1994), 9-12.

9. Jack Behrman, *Discourse on Ethics and Business* (Cambridge, MA: Oelgeschlager, Gunn and Hain, 1981), 19-30.

10. Reinhold Niebuhr, *The Nature and Destiny of Man* (New York:

Charles Scribner's Sons, 1941), 302.

11. Kent R. Middleton, Bill F. Chamberlin, and Matthew D. Bunker, *The Law of Public Communication*, 4th ed. (New York: Longman, 1997), 24-31.

12. In his dissenting opinion in *Abrams v. United States*, 250 U.S. 616, 630 (1919), Justice Oliver Wendell Holmes articulated the reasoning underlying this enduring concept in law: "The best test of truth is the power of the thought to get itself accepted in the competition of the market." In his First Inaugural Address, Thomas Jefferson extolled "the safety with which error of opinion be tolerated where reason is left free to combat it." John Gabriel Hunt, ed., *The Essential Thomas Jefferson* (New York: Gramercy, 1984), 199. This concept, that truth naturally overcomes falsehood when they are allowed to compete, derives from Enlightenment philosophy regarding the value of free exchange of ideas and has been prominent in American discourse on freedom of speech and press since before the nation's founding. See Jeffrey A. Smith, *Printers and Press Freedom: The Ideology of Early American Journalism* (New York: Oxford University Press, 1988), 31-41. For a discussion of the way the concept has been used by the Supreme Court in many free-speech cases, see W. Wat Hopkins, "The Supreme Court Defines the Marketplace of Ideas," *Journalism & Mass Communication Quarterly* 73 (spring 1996): 40-52.

13. Roy Pascal, "Property and Society—The Scottish Historical School of the Eighteenth Century," *Modern Quarterly* 61 (1, 1938): 167-78.

14. Robert Boyden Lamb, *Property Markets and the State in Adam Smith's System* (New York: Garland, 1987), 431, 433.

15. Robert Falkner, *A Conservative Economist? The Political Liberalism of Adam Smith Revisited* (London: Mill Institute, 1997), 5.

16. "As every individual, therefore, endeavours as much as he can to both employ his capital in the support of domestic industry, and so to direct that industry that its produce may be of the greatest value; every individual necessarily labours to render the annual revenue of the society as great as he can. He generally, indeed, neither intends to promote the publick interest, nor knows how much he is promoting it. . . [H]e intends only his own security. . . . [H]e intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it." Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, vol. 1 (1776; reprint, Indianapolis, IN: Liberty Classics, 1976), 456.

17. Athol Fitzgibbons, *Adam Smith's System of Liberty, Wealth, and Virtue: The Moral and Political Foundations of "The Wealth of Nations"* (New York: Oxford University Press, 1995), 22.

18. Robert C. Solomon, *Ethics and Excellence: Cooperation and Integrity* (New York: Oxford University Press, 1992), 85. The reference "more like Boesky and Gekko" is shorthand for the "greed is good" philosophy espoused by 1980s Wall Street icons Ivan Boesky, whose deals made him a multimillionaire before he was sent to prison for insider trading, and

Gordon Gekko, the fictional character with a similar story in Oliver Stone's 1987 film, *Wall Street*. In Solomon's scathing rejection of associating that philosophy with Smith: "First, there is nothing in Smith's work that would even for a moment suggest that 'greed is good,' and the 'invisible hand' metaphor . . . plays a much smaller role in Smith's view of the market and morality than is usually implied. Second, Smith . . . emphasizes the importance of institutions and social and interpersonal relationships much more than he does our concern for individual self-interest, though he does not, of course, deny the latter. Third, Smith's notion of 'self-interest' is not at all the asocial or antisocial sentiment it is usually made out to be. . . . Doing good is a matter neither of duty nor compulsion . . . but a genuine source of pleasure for its own sake."

19. J. Ralph Lindgren, *The Social Philosophy of Adam Smith* (The Hague, Netherlands: Martinus Nijhoff, 1973), ix.

20. John E. Hill, *Revolutionary Values for a New Millennium: John Adams, Adam Smith and Social Virtue* (Lanham, MD: Lexington, 2000), 140.

21. Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph*, 20th anniv. ed. (Princeton: Princeton University Press, 1997), 100.

22. *First National Bank of Boston v. Bellotti*, 775-776, 783-784, 789, 806-807.

23. 447 U.S. 557 (1980).

24. The New York Public Service Commission had banned promotional advertising by electric utility corporations in an effort to reduce energy consumption.

25. *Central Hudson v. Public Service Commission*, 566: "In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest."

26. *Central Hudson v. Public Service Commission*, 580-581.

27. *Central Hudson v. Public Service Commission*, 569-570. The Court said it had not been shown that the government was unable to utilize a more limited regulation to protect its interest in conservation, rather than banning all such promotional advertising.

28. *Consolidated Edison Co. of New York v. Public Service Commission of New York*, 447 U.S. 530 (1980). In the decision, the Court ruled that the state's Public Service Commission had infringed free speech by prohibiting public utility corporations from discussing controversial issues of public policy in inserts with monthly utility bills.

29. *Consolidated Edison Co. of New York v. Public Service Commission of New York*, 533, quoting *First National Bank of Boston v. Bellotti*, 777.

30. *Pacific Gas & Electric Co. v. Public Utilities Commission*, 475 U.S. 1 (1986).

31. See Brief for Appellant, 3-9, *Pacific Gas & Electric v. Public Utilities Commission*, 475 U.S. 1 (1986) (No. 84-1044). Postal regulations required

sending the bills by first-class mail at a minimum cost of between 16.5 and 17 cents each. The billing material weighed less than one ounce, so there was "extra space" in which additional material could be mailed for no additional postage.

32. *Pacific Gas & Electric v. Public Utilities Commission*, 9.

33. *Federal Election Commission v. National Right to Work Committee*, 459 U.S. 197 (1982).

34. See Brief for Appellant, 2-10, *Federal Election Commission v. National Right to Work Committee*, 459 U.S. 197 (1982) (No. 81-1506). *Buckley v. Valeo*, 424 U.S. 1, 19 (1976), had established earlier that money is speech, "because virtually every means of communicating ideas in today's mass society requires the expenditure of money."

35. *Federal Election Commission v. National Right to Work Committee*, 210-11.

36. *Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986).

37. *Federal Election Commission v. Massachusetts Citizens for Life*, 259, 263-264. In its decision, the Court established a three-part test to distinguish ideological corporations like MCFL from business corporations: "In particular, MCFL has three features essential to our holding that it may not constitutionally be bound by § 441b's restriction on independent spending. First, it was formed for the express purpose of promoting political ideas, and cannot engage in business activities. If political fundraising events are expressly denominated as requests for contributions that will be used for political purposes, including direct expenditures, these events cannot be considered business activities. This ensures that political resources reflect political support. Second, it has no shareholders or other persons affiliated so as to have a claim on its assets or earnings. This ensures that persons connected with the organization will have no economic disincentive for disassociating with it if they disagree with its political activity. Third, MCFL was not established by a business corporation or a labor union, and it is its policy not to accept contributions from such entities. This prevents such corporations from serving as conduits for the type of direct spending that creates a threat to the political marketplace."

38. *Austin v. Michigan State Chamber of Commerce*, 659-660. The Michigan regulation prohibited corporations from using general treasury funds to make independent expenditures in connection with state candidate elections, requiring that such expenditures be made from segregated funds raised from contributors to the fund and used solely for political purposes.

39. Note, "The Corporation and the Constitution: Economic Due Process and Corporate Speech," *Yale Law Journal* 90 (1981): 1857.

40. William Bailey, "Corporate/Commercial Speech and the Marketplace First Amendment: Whose Right Was It Anyway?" *Southern Communication Journal* 61 (winter 1995): 122.

41. Edwin P. Rome and William H. Roberts, *Corporate and Commercial Free Speech: First Amendment Protection of Expression in Business* (Westport, CT: Quorum Books, 1985), vii.

42. Daniel J. H. Greenwood, "Essential Speech: Why Corporate Speech

is Not Free," *Iowa Law Review* 83 (1998): 1068.

43. Deetz, *Democracy in an Age of Corporate Colonization*, 52, ix.

44. James W. Kuhn and Ivar Berg, *Values in a Business Society: Issues and Analyses* (New York: Harcourt, Brace & World, 1968), vi, 2.

45. Robert Weissman, "First Amendment Follies: Expanding Corporate Speech Rights," *Multinational Monitor* 19 (May 1998): 15.

46. Randy M. Mastro, Deborah C. Costlow, and Heidi P. Sanchez, "Taking the Initiative: Corporate Control of the Referendum Process Through Media Spending and What to Do About It," *Federal Communications Law Journal* 32 (1980): 315. Allen K. Easley, "Buying Back the First Amendment: Regulation of Disproportionate Corporate Spending in Ballot Issue Campaigns," *Georgia Law Review* 17 (1983): 675. David R. Lagasee, "Undue Influence: Corporate Political Speech, Power and the Initiative Process," *Brooklyn Law Review* 61 (1995): 1347. John S. Shockley, "Direct Democracy, Campaign Finance, and the Courts: Can Corruption, Undue Influence, and Declining Voter Confidence Be Found?" *University of Miami Law Review* 39 (1985): 377.

47. Francis H. Fox, "Corporate Political Speech: The Effect of *First National Bank v. Bellotti* Upon Statutory Limitations on Corporate Referendum Spending," *Case Western Reserve Law Review* 29 (1979): 809.

48. Gary Hart and William Shore, "Corporate Spending on State and Local Referendums: *First National Bank of Boston v. Bellotti*," *Kentucky Law Journal* 67 (1978-79): 101.

49. C. Edwin Baker, "Realizing Self-Realization: Corporate Political Expenditures and Redish's The Value of Free Speech," *University of Pennsylvania Law Review* 130 (1982): 653.

50. Robert A. Prentice, "Consolidated Edison and *Bellotti*: First Amendment Protection of Corporate Political Speech," *Tulsa Law Journal* 16 (1981): 656.

51. Marilyn Friedman and Larry May, "Corporate Rights to Free Speech," *Business and Professional Ethics Journal* 5 (fall-winter 1986): 19-20. In this article, Friedman and May articulated a three-part assertion of the ethical problems represented by corporate speech: "First, corporations are constituted out of human individuals whose speech is already protected. This ontologically dependent relationship creates the empirical possibility for conflict between the unrestricted speech of corporations and the free speech rights of their individual human members. Second, the potential for vast corporate wealth creates the empirical possibility that corporations can overwhelm individuals in the arena of expression. Third, corporations are not entities with either a moral or constitutional *prima facie* entitlement to the legal protection of their expression, because corporations are not politically sovereign."

52. Aditi Gowri, "Speech and Spending: Corporate Political Speech Rights Under the First Amendment," *Journal of Business Ethics* 17 (16, 1998): 1849, 1853-1854.

53. Edwin M. Epstein, *The Corporation in American Politics* (Englewood Cliffs, N.J.: Prentice-Hall, 1969) 7, 16, 324.

54. Norman Barry, *Business Ethics*, First Ichor Business Book ed. (West Lafayette, IN: Purdue University Press, 2000).

55. Martin H. Redish and Howard M. Wasserman, "What's Good for

General Motors: Corporate Speech and the Theory of Free Expression," *George Washington Law Review* 66 (1998): 235-40.

56. Cass R. Sunstein, *Democracy and the Problem of Free Speech* (New York: Free Press, 1993), 235-36.

57. S. Prakash Sethi, *Advocacy Advertising and Large Corporations: Social Conflict, Big Business Image, the News Media, and Public Policy* (Lexington, MA: Lexington Books, 1977), 328.

58. Henry N. Butler and Larry E. Ribstein, *The Corporation and the Constitution* (Washington, DC: AEI Press, 1995), 74-75.

59. Douglas M. Ramler, "Austin v. Michigan Chamber of Commerce: The Supreme Court Takes a 'Less Speech, Sounds Great' Approach to Corporate Political Expression," *Federal Communications Law Journal* 43 (1991): 421.

60. Michael Schofield, "Muzzling Corporations: The Court Giveth and the Court Taketh Away a Corporation's 'Fundamental Right' to Free Political Speech in *Austin v. Michigan Chamber of Commerce*," *Louisiana Law Review* 52 (1991): 253.

61. Sean T. Geary, "Austin v. Michigan Chamber of Commerce: Freedom of Expression Issues Implicated by the Government Regulation of Corporate Political Expenditures in Candidate Elections," *Boston University Law Review* 72 (1992): 825.

62. G.R. Bassiry and Marc Jones, "Adam Smith and the Ethics of Contemporary Capitalism," *Journal of Business Ethics* 12 (August 1993): 623.

63. Eli Ginzberg, *The House of Adam Smith* (New York: Octagon, 1964), 623.

64. Smith, *The Wealth of Nations*, vol. 2, 661.

65. Further, Smith did not propose capitalism as a perfect system, only as one preferable to mercantilism. He in fact articulated in particular five moral problems associated with capitalism: impoverishing the spirit of the workers and the work ethic more generally, creating cities in which anonymity facilitated price-fixing, expanding the ranks of the idle rich, inducing government to foster monopolies and selective privileges, and separating ownership and control as the scale and capital requirements of business firms increased. See James Wilson, "Adam Smith on Business Ethics," *California Management Review* 32 (fall 1989).

66. Denis Collins, "Adam Smith's Social Contract: The Proper Role of Individual Liberty and Government Intervention in Eighteenth Century Society," *Business and Professional Ethics Journal* 7 (fall-winter 1988): 141.

67. Jerry Z. Muller, *Adam Smith in His Time and Ours: Designing the Decent Society* (New York: Free Press, 1993), 6.

68. Smith, *Wealth of Nations*, vol. 1, 267.

69. Bishop, "Adam Smith's Invisible Hand Argument," 177-78. Ironically, although Smith found that "constant drive" beneficial in such a context, he considered it to be illusory, maintaining that neither wealth nor social prestige actually increases individual happiness. Smith wrote: "If we consider the real satisfaction which all these things are capable of affording . . . it will always appear in the highest degree contemptible and trifling. But we rarely view it in this abstract and philosophical light.

... The pleasures of wealth and greatness ... strike the imagination as something grand, and beautiful, and noble, of which the attainment is well worth all the toil and anxiety which we are so apt to bestow on it. And it is well that nature imposes upon us in this manner. It is this deception which rouses and keeps in continual motion the industry of mankind." Adam Smith, *The Theory of Moral Sentiments* (1759; reprint, Amherst, NY: Prometheus, 2000, 263.

70. Smith, *Wealth of Nations*, vol. 1, 341.

71. Muller, *Adam Smith in His Time and Ours*, 15.

72. Joyce Appleby, *Capitalism and a New Social Order: The Republican Vision of the 1790s* (New York: New York University Press, 1984), 32, 50-51.

73. Patricia H. Werhane, *Adam Smith and His Legacy for Modern Capitalism* (New York: Oxford University Press, 1991), 105.

74. *Central Hudson v. Public Service Commission*, 592. Rehnquist has consistently held that corporate speech is entitled to little if any First Amendment protection, primarily because the corporation's status as a government-created entity makes it subject to government regulation, including regulation of corporate speech. However, in his *Central Hudson* dissent, Rehnquist cited Smith in arguing that an unregulated marketplace of ideas would not be "free from ... imperfections," any more than would an unregulated economic marketplace. It should be noted that Rehnquist actually mischaracterized Smith's "invisible hand" concept in mistakenly associating Smith's concepts with laissez-faire economic theory.

75. Smith, *The Theory of Moral Sentiments*, 194.

76. Hill, *Revolutionary Values for a New Millennium*, 114.

77. Smith, *The Theory of Moral Sentiments*, 120

78. Smith, *Wealth of Nations*, vol. 2, 708.

79. Smith, *Wealth of Nations*, 687-688.

80. Werhane, *Adam Smith and His Legacy for Modern Capitalism*, 107, 110.

81. Smith, *Wealth of Nations*, vol. 2, 708.

82. *First National Bank of Boston v. Bellotti*, 784.

83. *First National Bank of Boston v. Bellotti*, 776-777, 790.

84. *Central Hudson v. Public Service Commission*, 569-570.

85. *Consolidated Edison Co. of New York v. Public Service Commission of New York*, 533-534, 537.

86. *Pacific Gas & Electric v. Public Utilities Commission*, 9.

87. *Central Hudson v. Public Service Commission*, 537-538, quoting *Police Department of Chicago v. Mosley*, 408 U.S. 92, 96 (1972).

88. *First National Bank of Boston v. Bellotti*, 789.

89. *Federal Election Commission v. National Right to Work Committee*, 459 U.S. 197, 210-211 (1982).

90. See *Buckley v. Valeo*, 424 U.S. 1, 47 (1976).

91. *Federal Election Commission v. National Right to Work Committee*, 207.

92. *Federal Election Commission v. Massachusetts Citizens for Life*, 257-258.

93. *Federal Election Commission v. Massachusetts Citizens for Life*, 257-258.

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94. *Austin v. Michigan State Chamber of Commerce*, 668-69.
 95. Bassiry and Jones, "Adam Smith and the Ethics of Contemporary Capitalism," 623.
 96. Bishop, "Adam Smith's Invisible Hand Argument," 177.
 97. Smith, *Wealth of Nations*, vol. 1, 267.
 98. Smith, *Wealth of Nations*, vol. 2, 708.